

EMILIANO U. ESCOTO, PETITIONER, VS. ANUNCIACION VDA. DE GRANADA AND THE PUBLIC SERVICE COMMISSION, RESPONDENTS.*G.R. No. L-33088. August 31, 1971*

Ponente: REYES, J.B.L., J.

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Emiliano U. Escoto petitions for a review of the order of the Public Service Commission dated 7 December 1970 (Petition, Annex "H") revoking its decision of 5 August 1970 that approved the transfer of five (5) certificates of public convenience from Rosita H. Natividad to Emiliano U. Escoto, and cancelling the certificates issued in the name of the latter.

The background facts, virtually conceded by petitioner Escoto, are the following:

Private respondent Anunciacion Vda. de Granada had instituted an action in 31 March 1964 against Rosita Natividad, former holder of the certificates in question, and operator of several PUJ jitneys, to recover damages for the death of her husband, who was hit by one of said vehicles. The driver had been criminally convicted and in the civil suit Mrs. Granada was awarded an indemnity of P70,000, plus 10% attorney's fees, by the Court of First Instance of Iloilo on 11 September 1965, and execution pending appeal was ordered. The judgment was affirmed by the Court of Appeals (CA-G.R. No. 37340-R) and ultimately became final upon this Supreme Court denying review (G. R. No. L-32157) on 2 July 1970.

Meanwhile, Rosita Natividad and Emiliano U. Escoto, on 27 April 1970, applied to the Public Service Commission for approval of the sale for P40,000 of the 77 jitneys and the public service certificates owned by the former to the latter, pursuant to a deed allegedly executed on 3 June 1964, almost six (6) years prior to the petition to the Public Service Commission (Case No. 70-2754). No objection having been filed, despite publication, the Public Service Commission approved the transfer, as aforesaid, on 5 August 1970.

On 23 September 1970, Mrs. Granada petitioned the Public Service Commission for a reopening of the case and the setting aside of approval of the transfer of the equipment and certificates to Escoto, pleading the foregoing facts; that the sale by Natividad to Escoto was simulated and fictitious; and that Mrs. Granada had not discovered the transfer until 16 September 1970. Escoto opposed the reopening of the case on the grounds (a) that Mrs. Granada, not being a party in interest, had no personality to ask for the case's reopening; (b) that the decision sought to be reopened had already become final and inalterable; and (c) that the issues raised by Mrs. Granada were judicial issues not within the jurisdiction of the Public Service Commission.

As noted at the beginning of this opinion, the Public Service Commission granted the petition to reopen and, after hearing both parties, found that the sale of the Natividad certificates to Escoto was presumptively in fraud of creditors under Article 1387 of the New Civil Code, providing that:

"ART. 1387. All contracts by virtue of which the debtor alienates property by gratuitous title are presumed to have been entered into in fraud of creditors, when the donor did not reserve sufficient property to pay all debts contracted before the donation.

"Alienations by onerous title are also presumed fraudulent when made by persons against whom some judgment has been rendered in any instance or some writ of attachment has been issued. The decision or attachment need not refer to the property alienated, and need not have been obtained by the party seeking the rescission.

"In addition to these presumptions, the design to defraud creditors may be proved in any other manner recognized by the law of evidence." (Emphasis supplied)

The Public Service Commission likewise found that Mrs. Granada had no previous knowledge of the petition for the Public Service Commission to approve the transfer and that she had sustained, or was in immediate danger of sustaining, injury as a result of the transfer, and, in view thereof, revoked its previous approval of the sale and ordered that Escoto's certificates be cancelled. Unable to secure reconsideration, Escoto came to this Court on appeal by certiorari, claiming lack of jurisdiction and or grave abuse of discretion.

We find the petitioner's claim untenable. There is no denying that in petitioning the Commission for the approval of the transfer of Natividad's units and service certificates to Escoto, the applicants did not disclose to the Public Service Commission that a judgment had been previously obtained by Mrs. Granada against the transferor, nor that a writ of execution had been issued against her, thereby rendering the transfer presumptively fraudulent as against the judgment creditor (see Petition, Annex "B"). Nor is it doubtful that had the foregoing circumstances been revealed, the Public Service Commission could very well have refused to approve the transfer, since the latter was subject to rescission by the regular courts, leading to a consequent disruption of the public services transferred, to the detriment of the general public. Moreover, the Commission could not but view with disfavor a petition for its approval of a transaction of doubtful correctness, for such approbation tended to place the Commission's acts and reputation in a derogatory light, making it appear as if it were cooperating to defraud a creditor.

Under the circumstances, the Public Service Commission had authority to revoke its approval, because under the Public Service law (Section 16(m), Commonwealth Act No. 146), it could cancel or revoke a certificate "when-ever the facts and circumstances on the strength of which a certificate was issued have been misrepresented or materially changed", concealment of material facts being in effect a misrepresentation. The order complained of in the case before us is proof that the Public Service regarded the facts concealed from it as material and that, if known, would have caused it to withhold or deny approval of the transfer in question. In *Pecson vs. Pecson*, 78 Phil. 522, this Court upheld the Commission's power to cancel a certificate of public convenience upon proof that the holder was a mere dummy of the transferor. The case at bar being very similar in nature, it should be governed by the same principle.

The non-appearance of respondent Mrs. Granada in the initial case (PSC No. 70-2754) was due to the petitioner's concealment of the preceding judgment in her favor, for which she is not to blame. Likewise, the lapse of the period to appeal the Public Service Commission order approving a transfer of certificates can not bar its cancellation for misrepresentation of actual facts.

WHEREFORE, the order appealed from is affirmed, with costs against petitioner.

Concepcion, C.J., Makalintal, Zaldivar, Castro, Fernando, Teehankee, Barredo, Villamor, and Makasiar, JJ., concur.

Dizon, J., did not take part.

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